



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box

01

MFDR Date Received

NOVEMBER 22, 2006

Respondent Name

LIBERTY INSURANCE CORP

MFDR Tracking Number

M4-07-2120-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated November 21, 2006: "This injured employee was treated at Memorial Hermann from November 23, 2005 through December 2, 2005. The complications from previous back injury coupled with the additional procedures performed rendered this back surgery a complicated procedure due to the nature of the procedure and extensive services and supplies provided. The nature of the patient's extensive back injury and post operative care required the patient to incur unusually costly services and medical supplies during his stay...Due to the unusually costly and extensive services and supplies provided and the patients extended length of stay, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401 (c)(6)... . Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

Requestor's Supplemental Position Summary Dated April 26, 2007: "Enclosed, please find two copies of the patient's complete medical chart pertaining to the above-referenced request for medical dispute resolution."

Requestor's Supplemental Position Summary Dated September 27, 2012: "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000.00, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method...Memorial Hermann has applied all available adjustments to this claim and has met its burden under the Stop-Loss exception. Accordingly, Memorial Hermann is entitled to the reimbursement..."

Affidavit of Michael C. Bennett dated September 21, 2012: "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The hospital performed partial corpectomys on the L4, L5 and S1; anterior lumbar discectomy and decompression on the L4-L5 and L5-S1; use of a Corlock biomechanical device on the L4-L5, and L5-S1; use of anterior spinal instrumentation in lumbar spine; and augmentation of fusion using bone morphogenetic protein. The surgical procedure was pre-approved by the insurance carrier. The type of surgery performed by the treating physician is inherently complicated and extensive." "The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital, as noted provided surgical care and subsequent post operative services to this patient who

incurred the usual and customary charges in the amount of \$167,821.25, which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

Affidavit of Patricia L. Metzger dated September 21, 2012: "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services and surgical procedures performed on this patient were complicated and unusually extensive."

Amount in Dispute: \$57,105.25

RESPONDENT'S POSITION SUMMARY

Respondent's Packet Dated May 31, 2007: "The patient remained in the facility 11/23/05-12/02/05. Only four of the nine days were preauthorized. The approach surgeon had to leave town for an emergency- claimant stayed in the hospital, with no authorization given, for 5 extra days. The posterior approach was performed on 11/23/05. The anterior approach was performed on 11/30/05. Paid for 2 days for the posterior approach, denied 5 days in between the two procedures as not authorized and paid for 2 days for the anterior approach. Disallowed days 11/25/05-11/29/05, as not authorized...Paid inpatient services per TX FS at the stop loss reimbursement methodology of 75% of total billed charges and U&C pricing per Corvel Medcheck...after auditing billed charges... Denied all charges under various rev codes associated with dos 11/25/05-11/29/05 as not authorized (\$8511.50)...Paid Implants at cost + 10%...Total payment made per TX FS: 68760.38."

Response Submitted by: Liberty Mutual Insurance Group, 2875 Browns Bridge Road, Gainesville, Georgia 30504

Respondent's Supplemental Position Summary Dated November 30, 2011: "Requestor has failed to meet the Austin Third Court of Appeals' mandate that, to qualify for reimbursement under the Stop-Loss Exception (former 28 Tex. Admin. Code 134.401 (c)(6)a hospital must demonstrate two things: the services it provided during the admission were unusually costly and unusually extensive, and its total audited charges exceeded \$40,000. " "Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment. No additional monies are due to the Requestor."

Response Submitted by: Hanna & Plaut L.L.P., Attorneys At Law Southwest Tower, 211 East Seventh Street, Suite 600, Austin, Texas 78701

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
November 23, 2005 through December 2, 2005	Inpatient Hospital Services	\$57,105.25	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, requires preauthorization for specific treatments and services.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- W1, Z601 – The charge exceeds usual and customary.
- W1, Z695 – The charges for this hospitalization have been reduced based on the fee schedule allowance.
- 62, X170 – Pre-Authorization was required, but not requested for this service per TWCC Rule 134.600.
- W1, Z560 –The charge for this procedure exceeds the fee schedule or usual and customary allowance,
- W1, Z711 – The charge for this procedure exceeds the customary charges by other providers for this service.
- W1, Z710 – The charge for this procedure exceeds the fee schedule allowance.

Issues

1. Does a preauthorization issue exist?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement for date of service November 5, 2005 through November 6, 2005 based upon "62, X170 – Pre-Authorization was required, but not requested for this service per TWCC Rule 134.600".

28 Texas Administrative Code §134.600(i) states "The health care requiring concurrent review for an extension for previously approved services includes: (1) inpatient length of stay."

The respondent states "Paid for 2 days for the posterior approach, denied 5 days in between the two procedures as not authorized and paid for 2 days for the anterior approach. Disallowed days 11/25/05-11/29/05, as not authorized."

The requestor did not submit a preauthorization report to support that preauthorized in accordance with 28 Texas Administrative Code §134.600(i) was obtained for dates of service November 25, 2005 through November 29, 2005; therefore, the respondent's denial based upon "62 and X170" is supported.

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the

carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$167,821.25. The Division concludes that the total audited charges exceed \$40,000.

3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals’ November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position statement states that “The complications from previous back injury coupled with the additional procedures performed rendered this back surgery a complicated procedure due to the nature of the procedure and extensive services and supplies provided. The nature of the patient’s extensive back injury and post operative care required the patient to incur unusually costly services and medical supplies during his stay.” This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: “The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000.00, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method...Memorial Hermann has applied all available adjustments to this claim and has met its burden under the Stop-Loss exception. Accordingly, Memorial Hermann is entitled to the reimbursement...” In support of the requestor’s position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor’s supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
4. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor’s position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was nine days; however, documentation supports that the Carrier pre-authorized a length of stay of four days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is \$4,472.00 for the three authorized days.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
 - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$81,305.74.
 - Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement can be recommended.

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399).” A review of the submitted hospital bill finds that the requestor billed \$795.00 for revenue code 390-Blood/Storage Processing. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue codes 390 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$321.00/unit for Desflurane, \$507.25 for Cardene IV 2.5mg/ml 10ml, and \$368.25 for Dexmedet HCL 200MCG/2ml 2ml. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$4,472.00. The respondent issued payment in the amount of \$68,760.38. Based upon the documentation submitted no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	10/31/2012 _____ Date
_____ Signature	_____ Medical Fee Dispute Resolution Manager	10/31/2012 _____ Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.